

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

SCOTT EUNGARD,

Plaintiff,

v.

Case No. 05-60272

Hon. John Corbett O'Meara

OPEN SOLUTIONS, INC.,

Defendant.

**ORDER GRANTING IN PART AND DENYING
IN PART PLAINTIFF'S DISCOVERY MOTION**

Before the court is Plaintiff's motion to quash a subpoena and to compel discovery, filed December 17, 2008. Defendant filed a response on December 28, 2008. Plaintiff submitted a reply brief on December 30, 2008. Pursuant to L.R. 7.1(e)(2), the court did not hear oral argument.

Defendant seeks to take the video *de bene esse* deposition of Mark Wintzinger on January 20, 2009, in Ohio. Defendant is concerned that Mr. Wintzinger will not appear in person, as he is apparently beyond the court's subpoena power. See Fed. R. Civ. P. 45. However, as Defendant admits, Mr. Wintzinger has agreed to testify at trial if Defendant reimburses him for his travel expenses and if his schedule can be accommodated. Defendant wants the option to take Mr. Wintzinger's deposition prior to trial "should he have another change of heart." Resp. at 3. Under the circumstances, where the witness is apparently willing and available, the court sees no need to conduct an out-of-state deposition the week prior to trial. Accordingly, the court will grant Plaintiff's motion to quash.

Plaintiff also seeks to compel answers to his second set of interrogatories and document requests, which were served on September 1, 2006. Pursuant to the court's scheduling order, discovery was to be completed by September 4, 2006. Further, once this matter was remanded by the Sixth Circuit on March 21, 2008, Plaintiff did not attempt to resolve any outstanding discovery issues until filing this motion on December 17, a little more than a month before trial. Both Plaintiff's discovery requests and his motion are untimely. The court will, therefore, deny the motion.

IT IS HEREBY ORDERED that Plaintiff's motion is GRANTED IN PART and DENIED IN PART, consistent with this order.

s/John Corbett O'Meara
United States District Judge

Date: January 8, 2009

I hereby certify that a copy of the foregoing document was served upon counsel of record on this date, January 8, 2009, by electronic and/or ordinary mail.

s/William Barkholz
Case Manager